



January 21, 2000

Ms. Margaret A. Roll  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2000-0205

Dear Ms. Roll:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131336.

The Texas Department of Human Services (the "department") received a request for the reports concerning two investigations. You state that the department is releasing to the requestor the report regarding the civil rights investigation. You claim that the other requested report of a management-directed investigation is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a), reads as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation.

You argue that the report relates to the pending case of *Espinoza v. Texas Department of Human Services*, No. C-6187-97-F (332<sup>nd</sup> Dist. Ct., Hidalgo County, Tex., filed Dec. 8, 1997). You state that the regional administrator and regional attorney ordered the management-directed investigation because “the complaints were made by Ms. Espinoza and because she has a pending lawsuit against the department that concerns related and similar complaints.” You submitted to this office a copy of plaintiff’s original petition in the *Espinoza* case. We have reviewed this petition and considered your arguments. Although the department failed to explain the relatedness of the information to the pending litigation, we conclude that the petition establishes that the requested information relates to the pending litigation. Accordingly, the department may withhold the requested information from the requestor based on section 552.103 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kay H. Hastings".

Kay H. Hastings  
Assistant Attorney General  
Open Records Division

KHH/jc

Ref: ID# 131336

Encl. Submitted documents

bcc: Ms. Elizabeth Espinoza  
1103 North Raul Longoria Road  
San Juan, Texas 78589  
(w/o enclosures)